Law of Nations - Juridical Opinions

Legal expert opinion

on the jus gentium situation of the

Principality of Sealand

issued by

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Representatives of the Principality of Sealand on whom detailed information is provided in the enclosed catalogue have asked me to issue a legal expert opinion on the jus gentium situation of the Principality of Sealand.

The following statements are based on the assumption that information provided by the representatives of the representatives of the Principality of Sealand is correct.

I was told in particular that one of the persons who had occupied Sealand at the time had been acquitted of the charge of unlawfully having threatened British ships by making reference to the sovereign rights of Sealand by an English crown court in 1968. The court issued a declaratory judgement on the fact that Sealand was outside British territorial waters.

Furthermore, the British embassy in Bonn confirmed the "takeover of Sealand" as well as the fact that a separate postal and monetary system had been established there.

Finally, I was shown diplomatic passports of the Principality of Sealand which were officially endorsed with a visa by immigration authorities at airports in London, Paris and Munich.

On the basis of these facts, the

RESULT

of the following assessment is that

Sealand is a sovereign state in terms of jus gentium.

Erlangen, 5th February 1975
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Recognition of the Principality of Sealand by other states

The Principality of Sealand's qualification as a sovereign state does not depend on jus-gentium recognition of the Principality of Sealand as a state by other jus-gentium entities or even on the recognition of its government according to jus gentium or on future recognition. From the point of view of foreign politics, however, the Principality of Sealand cannot be completely indifferent to whether it is deemed to have been recognised de facto or de jure.

The following is taken into consideration:

1. Statements of German internal administration authorities which have taken note of the citizenship of the Principality of Sealand and seem to draw the corresponding normative conclusions from it, at least by deciding on the basis of German conflict of nationality law. "The recognition of citizenship of an individual in a not yet recognised state by the authority of a state on which sovereign functions were bestowed could be interpreted as a recognition of the new state" as these "political sovereign acts are a considerable expression of the justification of the existence of a sovereign state."

The only argument against it would be that the public authorities in charge of nationality matters of the Federal Republic of Germany are not part of the Foreign Office authorities of the Federal Republic of Germany and thus could not undertake any acts of recognition. Moreover, they had acted vis-à-vis a German national and not vis-à-vis an authority of the Principality of Sealand.

It is therefore questionable whether the Principality of Sealand can be deemed to have been recognised by the Federal Republic of Germany on the basis of the acts of the government or a municipal administration authority.

2. A British court judgement according to which a person who had threatened English ships by making reference to the state authority of the Principality of Sealand was acquitted.

This can hardly be interpreted as a recognition on the part of Great Britain. According to the verdict delivered by the judgement the Principality of Sealand, according to English law, is not situated in British sovereign waters, which means that English ships are not allowed to use force unless they were entitled to do so outside sovereign waters. In the present case, however, they were not entitled to do so.

3. Official endorsement with a visa and associated recognition of (diplomatic) passports of the Principality of Sealand by Great Britain, France and the Federal Republic of Germany.

It is doubtful whether this can be interpreted as any kind of recognition

on the part of these states last but not least because it was not the Foreign Office authorities of these states that became active to this end. At the time, however, the United Nations cautioned against recognising Manchukuo passports which means that recognition of passports is associated with a certain legal effect and England and France in particular refused to officially endorse the passports of the German Democratic Republic with a visa as long as and on the grounds that the German Democratic Republic had not been recognised by their governments.

As far as Great Britain and France are concerned, this means that these states at least consider the recognition of a passport to be an act of recognition as "a state". A fortiori, this must also apply to the recognition of diplomatic passports of the Principality of Sealand. The states concerned are further free to organise their Foreign Office authorities, to recognise "auxiliary officials" of the same. This is obviously the case with the border police.

England and France can therefore be deemed to have recognised the Principality of Sealand as a state.

4. Letters of the British embassy in Bonn are unmistakable acts of jus-gentium recognition on the part of Great Britain if they are addressed to a body of the Principality of Sealand in the Federal Republic of Germany – but only in this case and not if information is disclosed to a private individual.

The letter of the British embassy of 4th July 1973 at least contains clear indicators for the British Foreign Office authorities recognising the Principality of Sealand as a state: It was expressly ascertained that the state was founded, sovereign rights could be safeguarded without the authority protesting. Due to the geographical closeness of the Principality of Sealand to Great Britain and the fact that special interests are affected which for Great Britain results in its existence, the state can be deemed to have a certain "duty to respond": If the state did not intend to recognise the Principality of Sealand, it would have to make negative statements instead of expressly noting the existence of the Principality of Sealand. But the latter has happened. Great Britain thus can hardly deny having recognised the Principality of Sealand which can be seen from statements on item 3.

Summary of Results

1. The jus-gentium situation of the Principality of Sealand decisively depends on whether the island should be considered a sovereign state. The prerequisite for qualifying as a state is that the three elements of state – national territory, people constituting a nation and (sovereign) state authority – exist. This is the case in the Principality of Sealand as:

2. The Principality of Sealand has a national territory as it is based on a defined part of the surface of the earth which is in turn fixed to the hollowed out land. The "national territory" further is a legal, not a geographical term, a "spatial area in which a state becomes active" exists in the case of the Principality of Sealand. The Principality of Sealand is immovably fixed to the surface of the earth. The Principality of Sealand should not be compared to a ship as it is significantly and ultimately immovable; this fixed connection, however, is a decisive factor for

qualifying as a state, in case of the Principality of Sealand it is no more critical than with any natural island. The national territory of the Principality of Sealand is big enough, jus gentium does not state any minimum requirements in terms of geographical size for qualifying as a state (vide Vatican City). It is of no concern that this "national territory was created by man": After all, a "national territory" is no geographical-natural scientific term: National territory may be "artificially" constructed by reclaiming land from the sea by means of manufactured dykes and polder thus created is also "artificial" land; pile foundation structures such as the Principality of Sealand have always been recognised as a national territory up to now (Venice). If it is doubted whether artificial islands should be considered national territory, the question of under which circumstances such islands should in future be erected should be raised. De jure and de facto opportunities are limited. This is nothing to do with the Principality of Sealand which has been existing for a long time, qualifying as a national territory.

3. The Principality of Sealand has people constituting a nation although their number is very marginal; jus gentium does not provide for a minimum number of citizens. The Principality of Sealand's quality as a state is not in conflict with the fact that the founding people constituting a nation or the current citizens are completely or at least in part made up of foreign citizens. Jus gentium recognises effective secession; moreover, the international (and national) law of the persons of more than one nationality shall be applicable. The citizens of the Principality of Sealand do not have to have a special effective "native relationship to their state" provided that the Principality of Sealand does not "denaturalise" its citizens from other states.

4. The Principality of Sealand has a sovereign state authority: The political power exercised on the island has a certain systematic intensity, it is supra-ordinated and is exercised permanently. "In the external relationship", it is non-derived as it is originally founded on territorial seizure; a state is not required to be able to defend its territory with military-political means. "In the internal relationship", this state authority cannot be resisted and is undisputed; jus gentium does not provide for a certain form of government.

5. The Principality of Sealand is in a position to negotiate in terms of jus gentium although this is not an indispensable pre-condition for the Principality of Sealand qualifying as a state. The Principality of Sealand has a representative body in terms of jus gentium and is able to negotiate with key stets and organisations on a normal diplomatic and consular level. It can be represented by heads of mission vis-à-vis several subjects of international law and it can be represented everywhere by honorary consuls. As in other micro-states, the possibility of membership in international organisations is based on the efficiency of the Principality of Sealand with a view to the objectives which are to be reached.

6. The Principality of Sealand was founded by private individuals. Private individuals are entitled to found states (vide Israel). It is a fact as such which only becomes relevant in terms of jus gentium by effectiveness. It exists in the Principality of Sealand.

7. The rules of occupation according to international law confirm this legal situation. The island is a territory which was seized by occupation as it can permanently be populated and is easy to access. Its occupation is effective. The Principality of Sealand not only is a site of exploitation. Objections cannot be based on the fact that the platform was originally created and occupied by England. After all, it had clearly been deserted

and abandoned in the meantime and earlier occupation thus became ineffective. The renewed occupation of the Principality of Sealand did not have to be notified in terms of jus gentium even by its state authority.

8. These results are not impaired by new theories on "micro-states" whose quality as a subject of international law should be limited. The prevailing theory does not define the term micro-state, even minute-scale entities are endowed with full state quality. Numerous small-scale and minute-scale states have become independent in the past years (such as the Republic of Nauru, Pitcairn). In practice, minute-scale entities have always been recognised as states by other states; in international organisations, they were accepted as members on the basis of their efficiency and the criteria for membership were not based on their size. So if the term "micro-state" existed, it would only be of significance in international organisation law, if at all. Territorial sovereignty would also have to be completely taken into account in such micro-states in any case. This is all that counts in this context.

9. The Principality of Sealand shall, as a sovereign state, therefore be entitled to expand its territory by claiming coastal waters, continental shelf, spheres of influence at the high seas if and to the extent this is possible on the basis of general jus gentium, to drill for natural gas and mineral oil and to grant the respective government licenses as well as to regulate use of its air space.

10. In particular, the Principality of Sealand has territorial waters. The thesis that artificial islands can never have territorial waters is in contrast to prevailing theory. The Principality of Sealand is a state and not a "technical establishment". If even lighthouses have a certain degree of relevance for the determination of territorial waters, this shall also be applicable to the Principality of Sealand full-scale.

According to prevailing theory, coastal seas around artificial islands are recognised provided that they are permanently above the high tide level, have a permanently inhabitable surface and are visible under normal weather conditions. This applies to the Principality of Sealand.

Convention law does not conflict with this theory. On the occasion of the conference on the laws of the sea in 1930, the question was not answered but the opinions uttered – above all by Great Britain, Germany, the Netherlands and Denmark – were favourable for the recognition of coastal seas. On the occasion of the conference of Geneva in 1958, no decision was taken either. The problem is not prejudged by the fact that the definition of the term "island" is limited to natural entities and that only small-scale protection zones are considered for technical establishments: Artificial islands are not included in the wording of the treaty and the treaty can thus not be interpreted extensively; an explicit decision would have to have been taken with a view to earlier discussion; the quality of artificial islands as states is a problem of qualifying as a state within the framework of the law concerning persons which cannot merely be solved on the basis of the laws of the sea; after all, the Geneva conventions do not express general jus gentium in this respect and the Principality of Sealand is thus not bound by them. The current conference on the laws of the sea (1974 Caracas) has made "artificial islands" an independent sphere of problems which, in turn, shows that nothing should be prejudged in this context.

11. According to prevailing theory, even minute-scale entities have coastal seas. A fortiori, this also applies in the case of the Principality of Sealand as the relevance of coastal seas in the North Sea region is, to

the greatest extent, laid down in contracts even concerning small-scale entities.

12. The quality of the Principality of Sealand as a state does not conflict with the fact that it is only the result of an occupation of the high seas in terms of jus gentium. Claims can only be asserted vis-à-vis the erecting state (England) but it could, in no case, be requested to destroy Sealand as the rules on the foundation of states prevail. The law of occupation has always prevailed the freedom of the high seas.

Moreover, the Principality of Sealand has been in existence for more than 30 years without dispute, its territorial character has thus been proven. The high seas convention in 1958 implicitly recognised this. After all, the freedom of the high seas is under no circumstances generally recognised. The Principality of Sealand affects it to such a minor extent that the request to remove the minute-scale entity would be disproportionate.

13. Individual rights derived from the freedom of the high seas are not infringed by the existence of the Principality of Sealand either: The freedom to navigate is not impaired because the impediment is completely insignificant and because this freedom was decisively repressed, last but not least by technical establishments; it does not impair fishing rights as the protected area would be small and because jus gentium tolerates disproportionately more extensive impairments nowadays; cable rights should not be significantly impaired any way.

14. The mighty expansion of states, a phenomenon which is noticeable today – claims to the high seas have already resulted in repressing the freedom of the high seas for the benefit of sovereign areas and spheres of influence of the states. This reinforces the legitimacy of the existence of the Principality of Sealand according to jus gentium: Today, at least, it cannot be fought with arguments based on the laws of the sea any more as they would be based on an outdated conception of the high seas. The impairment resulting from the Principality of Sealand is minimum compared to new developments. Vice versa, the Principality of Sealand is hardly in a position to assert claims for influence in the North Sea which could constitute an impediment to international order. This is precluded by laws governing this area and British political preponderance.

15. England's rights to a continental shelf do not conflict with the existence of the Principality of Sealand according to jus gentium. England herself has created the platform, she has subsequently neither destroyed the island nor has she protested against the Principality of Sealand. This constitutes a waiver of potential rights to the continental shelf. The Principality of Sealand, in turn, can assert its rights to the continental shelf pursuant to the Geneva convention in 1958, will, however, take England's rights into account to an adequate extent in terms of foreign politics and will have to find a practical agreement with this country.

16. The same principles shall apply to the neighbouring area. Great Britain has also waived potential rights while the Principality of Sealand – if at the same time safeguarding British interests – can assert them.

17. The recognition of a state of Sealand does not constitute the issuance of a politically dangerous blank cheque to change the map: Although jus gentium protects the territorial integrity of all states, it does not prohibit expansion and does not affect it. Artificial islands like Sealand could only be established in rare isolated cases for technical and legal reasons. In particular, the rights of the coastal states to the continental shelf and neighbouring areas conflict with it.

18. The Principality of Sealand can be deemed to have already been recognised by England and France today as these countries have recognised the (diplomatic) passports of this country and attribute recognition qualities to their practice of recognition otherwise. British court judgements as well as statements by the British embassy in Bonn to private individuals cannot be interpreted as recognition. They are, however, an indicator for British attitude. It could not be clarified whether the Federal Republic of Germany recognises the Principality of Sealand as a state by the acts of its public authorities in charge of nationality matters or recognition of passports.

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